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Walker v. Superior Court: Religious Convictions May Bring Felony Convictions

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Courts and legislatures have long struggled to balance religious liberties against state interests.[1] When parents' religious convictions cause them to use prayer to heal their children instead of medicine, the state must balance parental religious and child rearing concerns against the state's interest in protecting child safety.[2] Common law provided that parents' failure to provide medical care to their children, because of a religious belief in prayer healing, constituted a defense to involuntary manslaughter charges based on a failure to provide a child with medical care.[3] In addition, provision of prayer treatment could exempt parents from misdemeanor prosecutions unless a statute specifically required provision of medical care for children.[4] In *Walker v. Superior Court*,[5] the California Supreme Court deviated from the common law and established new precedent by disallowing reliance on a religious belief in prayer healing as a defense to felony child endangerment and involuntary manslaughter charges.[6]

Part I of this Note reviews existing case law and California statutes discussing religious exemptions to child protection policies. Part II

1. *See* Prince v. Massachusetts, 321 U.S. 158, 165 (1943).
2. *See id.* at 164-65.
3. *See infra*, notes 48-69 and accompanying text (discussing religious defenses to charges of common law criminal negligence).
4. *See infra*, notes 62-66 and accompanying text (discussing prayer healing as a defense to misdemeanor charges).
5. 47 Cal. 3d. 112, 763 P.2d 852, 253 Cal. Rptr. 1 (1988).
6. *Walker v. Superior Court*, 47 Cal. 3d 112, 144, 763 P.2d 852, 873, 253 Cal. Rptr. 1, 22 (1988).

examines the rationale and holding of the court in *Walker*. Finally, part III presents the legal ramifications of the *Walker* decision.

I. Legal Background

A. Constitutionally Guaranteed Rights to Freedom of Religion and Due Process of Law

Prosecution for the consequences of religious conduct must survive substantial constitutional scrutiny.[7] First, laws proscribing prosecution must clearly define criminal conduct under the void for vagueness doctrine.[8] Second, laws may not prohibit the free exercise of religion unless a compelling governmental interest exists and there are no less restrictive alternatives.[9] Third, laws can not have the effect of establishing religion.[10]

1. A Citizen's Right to Fair Notice of Criminal Conduct Under the Void for Vagueness Doctrine

The due process clauses of the United States and California Constitutions mandate that statutes provide citizens with fair notice of what conduct incurs criminal sanctions.[11] Fair notice requires that statutes provide a standard of legal conduct as well as a standard for enforcement and ascertainment of guilt.[12] Laws which fail to provide citizens fair notice that their conduct is criminal are considered void for vagueness.[13] Further, statutory schemes that issue such inexplicably contradictory commands that an ordinary person could

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7. U.S. Const., amend. I. *See generally,* Development in the Law, *Religion and the State*, 100 Harv. L. Rev. 1606 (1987)(discussing the constitutional scrutiny applied to laws infringing on religious conduct).

8. J. Nowak, Constitutional Law 846 (3d ed. 1986). *See also* U.S. Const. amend. XIV.

9. Thomas v. Review Bd. of Ind. Employment Sec. Div., 450 U.S. 707, 718 (1981); Developments in the Law, *Religion and the State*, 100 Harv. L. Rev. 1606, 1711 (1987).

10. U.S. Const. amend. I.

11. U.S. Const. amend. XIV; Cal. Const., art. I, § 7. *See Walker v. Superior Court*, 47 Cal. 3d 112, 141, 763 P.2d 852, 871, 253 Cal. Rptr. 1, 20 (1988). *See generally* Note, *The Void-for-Vagueness Doctrine in the Supreme Court*, 109 U. Pa. L. Rev. 67 (1960).

12. *See* Kolender v. Lawson 461 U.S. 352, 357-58 (1983); Burg v. Municipal Court, 35 Cal. 3d 257, 269, 673 P.2d 732, 739, 198 Cal. Rptr. 145, 152 (1983).

13. *See Walker*, 47 Cal. 3d at 141, 763 P.2d at 871, 253 Cal. Rptr. at 20.

be precluded from making advance determinations as to the legality of their conduct may also be considered void for vagueness.[14] California courts will not find that statutes are void for vagueness unless a thorough review of all available statutory interpretations leaves uncertainty as to the legality of the questioned conduct.[15]

2. The Free Exercise and Establishment Clauses of the First Amendment to the United States Constitution

The free exercise clause of the United States Constitution protects religious beliefs from government regulation.[16] The United States Supreme Court interpreted the free exercise clause in *Sherbert v. Verner*.[17] The Court held that the government cannot prohibit individuals from following their religious precepts unless a compelling state interest justifies the intrusion, and the state interest cannot be protected in any other way.[18] In *Sherbert*, the Court analyzed a statute which appeared on its face not to discriminate on the basis of religion.[19] However, the statute did interfere with some religious beliefs by requiring employees to work on Saturday or forego unemployment benefits.[20] When a Seventh Day Adventist challenged the statute, the Court declared that facially neutral statutes which effectively impose on religious practice cannot be upheld unless allowing a religious exemption would render the whole statutory system unworkable.[21] Therefore, even though the governmental interest in a smooth functioning unemployment benefit system was compelling, the Court held that the system could work without imposing restrictions on religious liberty, and found in favor of the Seventh Day Adventist.[22]

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14. *See* Raley v. Ohio, 360 U.S. 423, 438 (1959); Connally v. General Constr. Co. 269 U.S. 385, 393 (1926).

15. *See Walker*, 47 Cal. 3d at 143, 763 P.2d at 872, 253 Cal. Rptr. at 21. All available statutory interpretations include statutory language, legislative history, legislative intent, and case law interpreting the statute. *Id. Accord* People v. Grubb, 63 Cal. 2d 614, 620, 408 P.2d 100, 105, 47 Cal. Rptr. 772, 777 (1965).

16. U.S. CONST. amend. I; Developments in the Law, *Religion and the State*, 100 HARV. L. REV. 1606, 1609 (1987).

17. 374 U.S. 398 (1963).

18. *Sherbert*, 374 U.S. at 406-10. *See* Developments in the Law, *Religion and the State*, 100 HARV. L. REV. 1606, 1711 (1987).

19. *Sherbert*, 374 U.S. at 400-01.

20. *Id.*

21. *Id.* at 408-10.

22. *Id.*

Further, *Prince v. Massachusetts*[23] established that protecting children constitutes a compelling governmental interest.[24] In *Prince*, the Court upheld a statute, which prohibited children from distributing religious literature in violation of child labor laws, as necessary to protect the state interest in child safety.[25] The case involved a guardian who allowed her nine year old ward to sell Jehovah's Witnesses' literature on city streets one evening, in accordance with both the guardian's and ward's religious beliefs.[26] A Massachusetts statute provided that no minor may sell any magazine or periodical on a public street, and that no parent or guardian may permit a minor to work in violation of the law.[27] The guardian, Mrs. Prince, argued that the statute infringed on both her parental rights guaranteed under the due process clause and her freedom of religion under the first amendment.[28] The Court acknowledged that parents have the right to give children religious training and encourage their children in religious practice, even against state power asserting contrary societal sentiment.[29] However, the court found that the family unit is not above government regulation even against a claim of religious liberty, and that neither parental rights or freedom of religion are beyond limitation.[30] Where a child's safety is endangered, the state has the right to protect the child.[31] Therefore, the court held that as long as Massachusetts had correctly determined that its labor statutes are necessary to protect children, the statutes are not constitutionally invalid.[32]

While laws may not restrict religious beliefs under the free exercise clause, the establishment clause prohibits the state from taking action

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23. 321 U.S. 158 (1944).
24. *Prince*, 321 U.S. at 168.
25. *Id.* at 170.
26. *Id.* at 159-62.
27. *Id.* at 159. *See* MASS. GEN. L., ch. 149, secs. 79-81 (1943).
28. *Prince*, 321 U.S. at 164.
29. *Id.* at 165.
30. *Id.* at 166.
31. *Id.* at 168.
32. *Id.* at 170. The Court expressly restricted its holding to the facts of the case and stated that:

> Our ruling does not extend beyond the facts the case presents. We neither lay the foundation 'for any [that is, every] state intervention in the indoctrination and participation of children in religion' which may be done 'in the name of their health and welfare' nor give warrant for 'every limitation on their religious training and activities.' The religious training and indoctrination of children may be accomplished in many ways, some of which, as we have noted, have received constitutional protection through decisions of this Court.

Id. at 171.

which favors religion over nonreligion or one religion over another.[33] Laws which afford a uniform benefit to all religions, thus favoring religion over nonreligion, should be analyzed under the United States Supreme Court decision in *Lemon v. Kurtzman*.[34] The *Lemon* test sets forth three criteria a law must meet in order to conform to the establishment clause.[35] Under *Lemon,* state regulations must serve a secular purpose,[36] neither advance nor inhibit religion,[37] and avoid excessive governmental entanglement with religion.[38]

The United States Supreme Court in *Larson v. Valente*[39] found that laws which discriminate among religions must be subjected to strict scrutiny by the courts.[40] To pass a strict scrutiny test, a law must be necessary to protect a compelling state interest.[41] However, denominational neutrality does not prevent states from discriminating among religions when such discrimination is based on a free exercise argument.[42] For where a burden falls especially hard on some religions, the government may accommodate religious practices under the free exercise clause.[43]

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33. *See* Everson v. Arkansas, 39 U.S. 97, 103-04 (1988). *See also* Walker v. Superior Court, 47 Cal. 3d 112, 148-49, 763 P.2d 873, 876, 253 Cal. Rptr. 1, 25. When the legislature accommodates religious practice by writing a religious exemption into a law, the legislature must not give an advantage to one group as opposed to another. *Everson*, 39 U.S. at 103-04. In his concurring opinion in *Walker*, Justice Mosk found that the religious exemption codified in California Penal Code section 270, allowing substitution of prayer therapy for medical treatment, violates the establishment clause. *See infra*, notes 79-84, 240-53 and accompanying text (discussing the religious exemption of the California Penal Code section 270 and Justice Mosk's concurrence in *Walker*).

34. 403 U.S. 602 (1971). *See Walker*, 47 Cal. 3d at 145, 763 P.2d at 874, 253 Cal. Rptr. at 23. *Accord* L. TRIBE, AMERICAN CONSTITUTIONAL LAW 1191 (2d ed. 1988) [hereinafter L. TRIBE]. "[T]he *Lemon v. Kurtzman* 'tests' are intended to apply to laws affording a uniform benefit to *all* religions, and not to provisions . . . that discriminate *among* religions." Larson v. Valente, 456 U.S. 228, 252 (1982) (emphasis in original).

35. Lemon v. Kurtzman, 403 U.S. 602, 612-13.

36. *Lemon*, 403 U.S. at 612. One commentator further states that a law violates the establishment clause if the purpose of the law is to endorse or disapprove of religion. L. TRIBE, *supra* note 34, at 1204-05; Wallace v. Jaffree, 472 U.S. 38, 56 (1985); Lynch v. Donnelly, 465 U.S. 668, 690 (1984). To the extent laws limit freedom to act on religious beliefs, laws may violate the free exercise clause as well. L. TRIBE, *supra* note 34, at 1205.

37. *Lemon*, 403 U.S. at 612. The essential effect of a law cannot be to influence the pursuit of religious tradition or the expression of religious belief in any direction. L. TRIBE, *supra* note 34 at 1214. "[Laws may not have the effect of] discriminating among different denominations, except as a consequence of lifting a government-imposed burden on free exercise; . . ." *Id.*

38. *Lemon*, 403 U.S. at 613. *See infra*, notes 249-53 and accompanying text (discussing Justice Mosk's concurrence in *Walker* which applies the *Lemon* test to California Penal Code section 270).

39. Larson v. Valente, 456 U.S. 228 (1982).

40. *Id.* at 246-47.

41. *Id.* at 248, 251.

42. L. TRIBE, *supra* note 34, at 1190, 1193.

43. L. TRIBE, *supra* note 34, at 1193.

B. Prior Case Law Addressing Religious Defenses to Misdemeanor and Manslaughter Charges Based on Criminal Negligence and Child Neglect

In order for a person to be convicted of involuntary manslaughter, his or her action, which results in the death of a human being, must amount to criminal negligence.[44] Criminal negligence has been defined as failure to do what a reasonable, careful, conscientious person is expected to do.[45] Courts have grappled with the question of whether religious beliefs and conduct can constitute criminal negligence.[46] If religiously motivated acts do not constitute criminal negligence, the accused has a defense to the charge of involuntary manslaughter.[47]

English courts first discussed the possibility of a religious defense to charges of manslaughter due to a failure to provide medical treatment in *Regina v. Wagstaffe*.[48] In *Wagstaffe*, cited as the common law rule,[49] the court found the defendant parents not guilty of manslaughter when their child died under religious treatment.[50] The court reasoned that since many differing opinions existed on the best treatment of disease, a parent could not incur criminal liability for using prayer treatment instead of the more widely practiced medical method.[51] The court further reasoned that the parents utilized the

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44. LaFave & Scott, Criminal Law 668-69, § 7.12 (2d ed. 1986).

45. Plain-Language Law Dictionary 82 (1st ed. 1980).

46. *See* Regina v. Wagstaffe, 10 Cox C.C. 530 (1868); State v. Sanford 99 Me. 441, 59 Atl. 597 (1905).

47. LaFave & Scott, Criminal Law 671, § 7.12 n.24 (2d ed. 1986).

48. 10 Cox. C.C. 530 (1868). *See*, Note, *California's Prayer Healing Dilemma*, 14 Hastings Const. L.Q. 395, 397 (1987) (authored by JoAnna A. Gekas) (citing *Regina* as one of the first faith healing cases).

49. Trescher & O'Neill, *Medical Care for Dependant Children: Manslaughter Liability of the Christian Scientist*, 109 U. Pa. L. Rev. 206 (1960) [hereinafter Trescher & O'Neill].

50. *Wagstaffe*, 10 Cox C.C. at 534. *See* Trescher & O'Neill, *supra* note 49, at 206. "Under the common law, no conviction of manslaughter predicated upon an omission to provide medical attendance from conscientious motives has been reported, and none can probably be had or sustained." 21 American and English Encyclopedia of Law 199 (2d ed. 1902). "Where from a conscientious conviction that God would heal the sick, and not from any intention to avoid the performance of their duty, the parents of a sick child refuse to call in medical assistance, though well able to do so, and the child consequently died, this was held at common law not to be culpable homicide." 1 Wharton, Criminal Law § 462 (12th ed. 1932).

51. *Wagstaffe*, 10 Cox. C.C. at 533. The medical belief of the time would have called for leeching (to bleed someone with leeches) and the administration of antimonial wine in small doses. *Id.* at 532.

healing method they believed worked best and, therefore, did not act in a criminally negligent manner.[52]

State v. Sanford,[53] the first significant American law case to discuss religious defenses to common law felony manslaughter charges, duplicated the *Wagstaffe* result but not the *Wagstaffe* reasoning.[54] In *Sanford*, the court held that a parent's decision not to provide medical care because of a belief in faith healing could not provide the basis for a manslaughter conviction.[55] Whereas the *Wagstaffe* court found that parents could not be guilty of criminal negligence for choosing prayer treatment when many different views on proper treatment existed, the Maine court in *Sanford* found that parents could not be found criminally negligent for applying the method they thought was best regardless of societal views on the subject of proper treatment.[56] The *Sanford* court stated that, to successfully raise a religious defense, the defendant must first prove his belief in the healing efficacy of a certain method.[57] Then, the defendant must show he did everything possible to correctly apply the religious practice.[58] Thus, the court established that the guilt or innocence of a defendant should not depend on a jury's belief about the efficacy of prayer healing.[59] Rather, the jury, in a manslaughter case based on criminal negligence, should determine whether the defendant did what he felt was best under the circumstances.[60] Under *Sanford*, the substitution of prayer treatment for medical care could not constitute criminal negligence when properly done by those with a sincere belief in the efficacy of spiritual healing.[61]

Whereas *Sanford* addressed religious defenses to felony manslaughter charges based on criminal negligence, an American court first discussed religious defenses to misdemeanor charges in *People v. Pierson*.[62] In *Pierson*, the New York Court of Appeals found a father guilty of a misdemeanor for failing to follow a New York penal

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52. *Id.* at 534.
53. 99 Me. 441, 59 A. 597 (1905).
54. State v. Sanford, 99 Me. 441, 452, 59 A. 597, 601 (1905); Trescher & O'Neill, *supra* note 49, at 208.
55. *Sanford*, 99 Me. at 452, 59 A. at 600-01.
56. *Id.*; *Wagstaffe*, 10 Cox C.C. at 534.
57. *Sanford*, 99 Me. at 452, 59 A. at 600-01.
58. *Id.*
59. *Id.*
60. *Id.*
61. *Id.*
62. People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903).

statute mandating that children be furnished medical care.[63] The statute specified that parents commit a misdemeanor when they willfully fail, without lawful excuse, to provide their children with medical attention.[64] The trial judge instructed the jury that the defendant's religious faith in prayer as a cure for disease and disbelief in the efficacy of medicine was not a lawful excuse for failing to provide medical attention and, consequently, did not constitute a defense to the charge.[65] The Court of Appeals for New York upheld the instruction and concluded that the legislature intended to recognize only medical attendance, and not prayer, as the proper treatment of disease.[66]

Early American cases, then, set forth two guidelines for determining the validity of religious defenses.[67] Under *Sanford*, acting pursuant to religious beliefs did not constitute criminal negligence and, therefore, functioned as a defense in manslaughter cases.[68] However, when a statute imposed a specific duty to provide medical care to children, as in *Pierson*, religious beliefs could not act as a defense to misdemeanor criminal liability.[69]

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63. *Pierson*, 176 N.Y. at 204, 68 N.E. at 246. The charge was brought under New York Penal Law section 288 which provided that "a person who willfully omits, without lawful excuse, to perform a duty by law imposed upon him to furnish food, clothing, shelter, or medical attendance to a minor . . . is guilty of a misdemeanor." N.Y. PENAL LAW § 288 (McKinney 1903); *Pierson*, 176 N.Y. at 212, 68 N.E. at 244.

64. N.Y. PENAL LAW § 288 (McKinney 1903).

65. *Pierson*, 176 N.Y. at 204, 68 N.E. at 246. The defendant belonged to the Christian Catholic Church of Chicago. *Id.* The court stated that because the statute created a parental duty to provide medical care, a parent's obligation to provide medical treatment existed even if parents were exempt from such a duty at common law. *Id.* at 206, 68 N.E. at 245. The New York Court of Appeals discussed the First Amendment Free Exercise Clause of the New York Constitution and determined that the clause could not invalidate the statute. *Pierson*, 176 N.Y. at 210-12, 68 N.E. at 246-47. The court stated that its decision does not indicate a judicial refusal to believe in the efficacy of alternative healing methods. *Id.* Rather, the court limited its statements to an interpretation of legislative intent. *Id.*

66. *Pierson*, 176 N.Y. at 210, 68 N.E. at 246. The Court of Appeals reasoned that the legislature did not contemplate the necessity of calling a physician for every trivial complaint. *Id.* The court allowed parents a reasonable amount of discretion in raising children. *Id.* The court articulated the correct standard to apply in similar cases as "at what time would an ordinary prudent person, solicitous for the welfare of his child and anxious to promote its recovery, deem it necessary to call in the services of a physician." *Pierson*, 176 N.Y. at 206, 68 N.E. at 244. The court determined that prayer treatment is not medical attendance. *Pierson*, 176 N.Y. at 210, 68 N.E. at 245-46.

67. *See supra* notes 48-69 and accompanying text (explaining the two common law guidelines applicable to religious defenses).

68. State v. Sanford, 99 Me. 441, 451-52, 59 A. 597, 600-01 (1905).

69. People v. Pierson, 176 N.Y. at 212, 68 N.E. at 244. By the mid-twentieth century, the majority rule in the United States followed *Pierson* and rejected religious defenses where statutes imposed affirmative duties to provide medical care for children. *See* Note, *supra* note 48, at 399; Trescher & O'Neill, *supra* note 49, at 212.

C. The California Approach to Protecting Children From Abuse and Neglect

In codifying California's child protection laws, the California legislature appears to have attempted to provide clear parental guidelines which would uphold a parent's free exercise concerns while protecting minors' personal interests in avoiding pain or discomfort.[70] Where parental religious beliefs may endanger child safety, California courts have had to determine whether to allow religious defenses to charges arising under child protection laws.[71] Until *Walker*, California courts followed the *Sanford* and *Pierson* guidelines for allowing religious defenses to misdemeanor and manslaughter charges.[72]

1. California Statutory and Case Law Addressing Parental Religious Defenses to Criminal Charges

Historically, criminal prosecutions of parents for child neglect have come under California Penal Code sections 270 and 273a.[73] Section 273a is California's felony child endangerment statute.[74] Section 273a states that those who willfully cause or permit a child's health to be injured or endangered are guilty of a felony.[75] Unlike the statute in

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70. *See* CAL. WELF. & INST. CODE §§ 300.5 (West Supp. 1990) (taking prayer treatment into account before awarding child custody on the basis of neglect), 16509, 16509.1 (West Supp. 1990) (stating that religious child-rearing practices and spiritual treatment of a minor's ills are not enough, in themselves, to constitute neglect); CAL. PENAL CODE §§ 270 (West 1988) (allowing reliance on spiritual treatment as a defense to failure to provide for a child), 11165.2(b) (West Supp. 1990) (exempting use of prayer treatment from the definition of child neglect); CAL. WELF. & INST. CODE § 16509 (West Supp. 1990) (stating that religious beliefs do not create a need for child welfare services unless the practices present a specific danger to the physical or emotional state of the child).

71. *See, e.g.*, People v. Arnold, 66 Cal. 2d 438, 442, 426 P.2d 515, 517, 58 Cal. Rptr. 115, 117 (1967) (finding a father guilty of misdemeanor-manslaughter under California Penal Code section 270 when his child died after receiving spiritual treatment, in lieu of medical care, in accordance with his religious beliefs as a member of the Church of the First Born).

72. *Id.*

73. *Id.*

74. *See* CAL. PENAL CODE § 273a (West 1988).

75. CAL. PENAL CODE § 273a(1) (West 1988). The law states:

> Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable. . .

Id.

Pierson, section 273a does not specifically mandate that medical treatment be used to protect children's health.[76] Therefore, the *Pierson* guidelines do not bar religious defenses to criminal charges arising under section 273a.[77] Instead, California courts have to determine whether a parent who sincerely believes in the efficacy of prayer healing willfully causes his child's injury when he chooses spiritual treatment over medical care.[78]

Originally, California Penal Code section 270, similar to the New York statute interpreted in *Pierson*,[79] mandated that parents provide for their children's necessary medical care.[80] According to the rationale adopted in *Pierson*, religious belief should not constitute a defense to misdemeanor charges arising under the original version of section 270, because the statute specifically required parents to furnish medical care.[81] However, in 1925, the legislature amended section 270 to add the words *or other remedial care* after the words *medical attendance*.[82] By amending section 270 in 1925, the California legis-

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76. *Id.* § 273a.

77. *See supra* notes 61-65 and accompanying text (describing the *Pierson* rationale).

78. *See* Walker v. Superior Court, 47 Cal. 3d 112, 123, 763 P.2d 852, 858, 253 Cal. Rptr. 1, 7 (1988) (discussing religious exemptions to section 273a).

79. People v. Pierson, 176 N.Y. 201, 204, 68 N.E. 243, 246 (1903) (interpreting New York Penal Code section 288).

80. CAL. PENAL CODE § 270 (West 1988). This section reads in part: "If a parent of a minor child willfully omits, without lawful excuse, to furnish necessary, food, shelter, or medical attendance, or other remedial care for his or her child, he or she is guilty of a misdemeanor . . ." *Id.*

81. *See supra*, notes 62-66 and accompanying text (describing the *Pierson* approach to allowing religious defenses to criminal charges arising under misdemeanor statutes). As originally enacted in 1872, section 270 listed a child's necessities as food, shelter, clothing, or medical attendance. CAL. PENAL CODE § 270 (1st ed. 1872). The entire statute read: "Every parent of any child who willfully omits, without lawful excuse, to perform any duty imposed upon him by law, to furnish necessary food, clothing, shelter, or medical attendance for such child, is guilty of a misdemeanor." *Id.*

82. 1925 Cal. Stat. ch. 325, sec. 1 at 544 (amending CAL. PENAL CODE § 270). This amendment was sponsored by the Christian Science Church. Brief for Real Party in Interest at 12, Walker v. Superior Court, 47 Cal. 3d 112, 763 P.2d 852, 253 Cal. Rptr. 1 (1988) (No. SF 24996). The word "remedial" means: "Affording a remedy; intended to remedy . . ." THE LIVING WEBSTER ENCYCLOPEDIC DICTIONARY OF THE ENGLISH LANGUAGE 810 (1st ed. 1971). The defendant in *Walker v. Superior Court* contended that this amendment was intended to restore the common law rule of *Wagstaffe*, which exempted parents whose children died after unsuccessful prayer treatment from manslaughter liability. *Walker*, 47 Cal. 3d at 130, 763 P.2d at 863, 253 Cal. Rptr. at 12. *Cf.*, Regina v. Wagstaffe, 10 Cox. C.C. 530 (citing England's common law rule); CAL. CIV. CODE § 22.2 (West 1982) (enacted after *Wagstaffe* and mandating that english common law, not contradicting the laws of California or the United States Constitution, be used as the rule of decision in California). The Attorney General maintains that the legislature did not intend to incorporate the common law rule by its amendment. Brief of the Real Party in Interest at 13-14, Walker v. Superior Court, 47 Cal. 3d 112, 763 P.2d 852, 253 Cal. Rptr. 1 (No. SF 24996) (1988). To support this contention, the Attorney General points out that the English Parliament added the words "medical aid"

lature may have intended to give parents a choice between administering medical care or some other form of remedial care.[83] After the 1925 amendment, California Penal Code section 270 no longer resembled the statute relied on in *Pierson*, because the words of section 270 appeared to no longer require parents to rely solely on medical care for their children.[84]

California Penal Code section 192 is California's codification of the involuntary manslaughter charge discussed in *Sanford*.[85] To be found guilty of involuntary manslaughter under section 192, the accused must be found to have acted in a criminally negligent or unlawful manner which results in the death of a human being.[86] If section 270 requires parents to furnish medical care to their children, then a parent refusing to do so would commit an unlawful act.[87] If the child dies as a result of this act, then the parent is guilty of involuntary manslaughter under section 192.[88] If, however, section 270 allows parents to choose between different healing methods, and the child dies after receiving only spiritual treatment, then the parent can only be convicted of involuntary manslaughter if his or her choice is found criminally negligent.[89] The *Sanford* common law standard held that administration of prayer therapy by a sincere believer in the efficacy of spiritual healing could not be a criminally negligent act.[90]

The question thus becomes whether the 1925 amendment to section 270 allows prayer healing, as "other remedial care," to constitute an acceptable substitute for medical attendance.[91] If section 270 recognizes prayer as a legal alternative to medicine, then it can be used as a defense to a charge of involuntary manslaughter under section 192.[92]

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to the Poor Law Amendment Act of 1868 six months after the *Wagstaffe* decision. *Id.*; 31 & 32 Vict. C. 122, § 37; Trescher & O'Neill, *supra* note 49, at 206-07. The Attorney General also relied on People v. Arnold, 66 Cal. 2d 438, 426 P.2d 515, 58 Cal. Rptr. 115 (1967) (interpreting section 270). *See infra* notes 92-104 and accompanying text (discussing *Arnold*).

83. *Walker*, 47 Cal. 3d at 120, 763 P.2d at 856, 253 Cal. Rptr. at 5.

84. *See* CAL. PENAL CODE § 270 (West 1988) (giving parents a choice between administering medical attendance or other remedial care to children). *See also Walker*, 47 Cal. 3d at 123, 763 P.2d at 858, 253 Cal. Rptr. at 7.

85. CAL. PENAL CODE § 192 (West 1988).

86. *Id.*

87. *See* CAL. PENAL CODE § 270.

88. *See* CAL. PENAL CODE § 192.

89. *Id.*

90. State v. Sanford, 99 Me. 441, 452, 59 A. 597, 600-01 (1905).

91. Walker v. Superior Court, 47 Cal. 3d 112, 120, 763 P.2d 852, 856, 253 Cal. Rptr. 1, 5 (1988).

92. *Id.*

2. California Case Law Addressing Religious Defenses in Child Neglect Cases

The California Supreme Court first interpreted the 1925 amendment to section 270 in the 1967 case of *People v. Arnold*.[93] *Arnold* held that the words "other remedial care" did not authorize substitutes for medical care.[94] Instead, the California Supreme Court concluded that the phrase created a further necessity parents must provide their children.[95] The parents in *Arnold* had administered prayer treatment for their child in lieu of medical care in accordance with their religious beliefs.[96] However, the child died from a bowel obstruction which probably could have been surgically removed up to twelve hours before the child's death.[97] The prosecution charged the child's mother with misdemeanor manslaughter alleging a violation of section 270.[98] Unlike involuntary manslaughter under section 192, misdemeanor manslaughter does not include criminal negligence as one of its elements.[99] Rather, to be found guilty of misdemeanor manslaughter, a defendant must break a misdemeanor statute and this violation must result in the death of a human being.[100] Thus, religious beliefs do not constitute a defense to misdemeanor manslaughter unless a religious exemption is written into the underlying misdemeanor statute.[101]

Had the state charged the defendant with involuntary manslaughter, the *Sanford* common law standard would have allowed the defendant to raise a religious defense to the charge.[102] Instead, the state charged the defendant with misdemeanor manslaughter which put the case in a framework analogous to *Pierson*, requiring the court to analyze the underlying statute to see if the legislature

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93. 66 Cal. 2d 438, 426 P.2d 515, 58 Cal. Rptr. 115 (1967).
94. *Arnold*, 66 Cal. 2d at 452, 426 P.2d at 524, 58 Cal. Rptr. at 124.
95. *Id.* The court found that other remedial care includes enemas, compresses, and prayer. *Id.*
96. *Arnold*, 66 Cal. 2d at 442, 426 P.2d at 517, 58 Cal. Rptr. at 117. The parents were members of the Church of the First Born, a religious group believing in faith healing. *Arnold*, 66 Cal. 2d at 442 n.1, 426 P.2d at 517 n.1, 58 Cal. Rptr. at 117 n.1.
97. *Arnold*, 66 Cal. 2d at 442, 426 P.2d at 517, 58 Cal. Rptr. at 117.
98. *Id.*
99. *See supra* notes 86-89 and accompanying text (discussing criminal negligence as an element of involuntary manslaughter).
100. LAFAVE & SCOTT, CRIMINAL LAW § 7.13 (2d ed. 1986).
101. *See id.*
102. *See supra* notes 53-61 and accompanying text (discussing the *Sanford* case).

intended a religious exemption.[103] Once the court determined that section 270 required parents to give medical care to their children regardless of parental religious beliefs, the court found the defendant guilty of a misdemeanor under section 270 for failing to provide medical care to her child.[104] Because the defendant was found guilty of a misdemeanor that resulted in a death, the defendant was found guilty of misdemeanor manslaughter without a recognized religious defense.[105]

In an apparent attempt to bar further misdemeanor manslaughter charges under section 270 from arising when prayer healing is substituted for medical attendance, the legislature amended section 270 in 1976 to define "other remedial care" as prayer treatment.[106] However, since the court in *Arnold* had held that the phrase "other remedial care" constituted an *additional* requirement and not a substitute for medical care, this amendment was ineffective in overruling the holding in *Arnold.*[107] Thus, after *Arnold* and the 1976 amendment to section 270, parents who failed to provide both spiritual treatment and medical care for sick children were guilty of a misdemeanor under section 270.[108]

In 1968, the California Supreme Court, in *People v. Sorenson*,[109] stated that the principle objectives of section 270 are to secure child support and to protect the public from the burden of supporting a child who has a parent able to provide support.[110] Therefore, under

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103. *Arnold*, 66 Cal. 2d at 441, 426 P.2d at 517-18, 58 Cal. Rptr. at 117. *See also supra* notes 61-68 and accompanying text (discussing the *Pierson* situation).

104. *See Arnold*, 66 Cal. 2d at 442-43, 426 P.2d at 517-18, 58 Cal. Rptr. at 117-18. *See supra* notes 62-66 and accompanying text (discussing the *Pierson* standard).

105. *See Arnold*, 66 Cal. 2d at 442-43, 426 P.2d at 517-18, 58 Cal. Rptr. at 117-18. The jury was instructed: "[T]hat it could find defendant guilty of manslaughter if it found that defendant had violated Penal Code section 270 . . . that such violation had caused death, and that defendant had acted in a manner dangerous to life and knew, or should have known, of this danger." *Id.* The misdemeanor-manslaughter rule raises a charge to involuntary manslaughter if the misdemeanor results in homicide. Note, *supra* note 48, at 400 n.49. *See also* K. REDEN & E. VERNON, MODERN LEGAL GLOSSARY 343 (1980).

106. 1976 Cal. Stat. ch. 673, sec. 1 at 1661. The amendment stated in part: "If a parent provides a minor with treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof, such treatment shall constitute 'other remedial care,' as used in this section." *Id.* This amendment has been deemed to have been passed in response to the *Arnold* holding. *See Walker*, 47 Cal. 3d at 127-28, 763 P.2d at 861, 253 Cal. Rptr. at 10. *See also* Senate Committee on Judiciary Report on AB 3843 at 2, 1975-76 Reg. Sess. (discussing the amendment). *See generally* 8 PAC. L.J. 415, 422 (1977) (discussing the amendment).

107. *See Arnold*, 66 Cal. 2d at 452, 426 P.2d at 524, 58 Cal. Rptr. at 124.

108. *Compare Arnold*, 66 Cal. 2d 438, 426 P.2d 515, 58 Cal. Rptr. 115 (1967) *with* CAL. PENAL CODE § 270 (illustrating the proposition in the text).

109. People v. Sorenson, 68 Cal. 2d 280, 437 P.2d 495, 66 Cal. Rptr 7 (1968).

110. *Sorenson*, 68 Cal. 2d 280, 287, 437 P.2d 495, 500, 66 Cal. Rptr. 7, 12.

Sorenson, if the state wishes to prosecute parents for actively harming children, charges should not be brought under section 270.[111] Rather, parental conduct resulting in bodily harm to children may be punished under the California felony child endangerment law, Penal Code section 273a.[112] Child abuse or neglect which results in the death of a minor may also be punished under the California involuntary manslaughter law, section 192.[113] The defendant in *Walker* was charged with felony child endangerment under section 273a, and involuntary manslaughter under section 192.[114] Under common law, religious beliefs should have constituted a defense to the charge of involuntary manslaughter based on criminal negligence.[115] However, prior to *Walker v. Superior Court,* California courts had no opportunity to determine whether they would allow religious defenses to charges brought under sections 273a and 192.[116] Further, *Walker* provided California courts with the first opportunity to reevaluate the *Arnold* holding since the 1976 amendment to section 270.

II. THE CASE

In *Walker v. Superior Court,*[117] the California Supreme Court allowed prosecution of a parent whose child died after being treated with prayer instead of medicine.[118] By allowing this prosecution, the court deviated from common law by rejecting the defendant's religious defense to a charge of involuntary manslaughter based on criminal negligence.[119] Further, the court found that religious belief does not constitute a defense to felony child endangerment charges under section 273a.[120] Thus, the court held that parents must provide medical treatment for their children's serious illnesses or risk criminal liability for child endangerment and involuntary manslaughter.[121]

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111. *See* Walker v. Superior Court, 47 Cal. 3d 112, 126, 763 P.2d 852, 860, 253 Cal. Rptr. 1, 9 (1988).

112. *Id. See* CAL. PENAL CODE § 273a(1) (West 1988). *See also supra* notes 74-78 and accompanying text (discussing § 273a).

113. *See* CAL. PENAL CODE § 192 (West 1988). *See supra* notes 85-89 and accompanying text (discussing Penal Code section 192).

114. *See Walker,* 47 Cal. 3d at 115, 763 P.2d at 856, 253 Cal. Rptr. at 4.

115. *See supra* notes 48-61 and accompanying text (discussing the common law doctrine).

116. *See Walker,* 47 Cal. 3d 112, 763 P.2d 852, 253 Cal. Rptr. 1 (1988) (holding that religious beliefs are not a defense to involuntary manslaughter and felony child endangerment charges).

117. Walker v. Superior Court, 47 Cal. 3d 112, 763 P.2d 852, 253 Cal. Rptr. 1 (1988).

118. *Walker,* 47 Cal. 3d at 118, 763 P.2d at 855, 253 Cal. Rptr. at 4.

119. *Id.* at 144, 763 P.2d at 823, 253 Cal. Rptr. at 22.

120. *Id.*

121. *Id.*

A. The Facts

On February 21, 1984, four-year-old Shauntay Walker developed flu-like symptoms.[122] The defendant, Laurie Walker, consistent with the tenets of her religion,[123] began to treat her child with prayer rather than seek medical aid.[124] She telephoned an accredited Christian Science practitioner[125] who also began to pray for the child, and employed a Christian Science Nurse to care for Shauntay.[126] On February 28th, Shauntay's condition improved after the prayer treatment began; she began eating and retaining food.[127] Her bowel movements became normal.[128] However, on March 8, the child appeared to relapse.[129] Again, Mrs. Walker and the practitioner prayed.[130] Shauntay's breathing returned to normal but the mother and practitioner continued their prayers.[131] The child died early on the morning of March 9, 1984.[132] Mrs. Walker was indicted on charges of involuntary manslaughter under Penal Code section 192 and felony child endangerment under section 273a.[133] Mrs. Walker filed a motion to dismiss, but the Superior Court of Sacramento County denied her motion, and the Third District Court of Appeal affirmed.[134] The Supreme Court of California then granted review.[135]

B. The Majority Opinion

The California Supreme Court affirmed the decision of the court of appeal allowing the defendant's prosecution for involuntary man-

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122. *Id.* at 118-19, 763 P.2d at 855, 253 Cal. Rptr. at 4.
123. *See* M. EDDY, SCIENCE AND HEALTH WITH KEY TO THE SCRIPTURES 497 (listing the six tenets of Christian Science).
124. *Walker*, 47 Cal. 3d at 119, 763 P.2d at 855, 253 Cal. Rptr. at 4.
125. Approximately 10,000 Christian Science practitioners exist worldwide. Trescher & O'Neill, *supra* note 49, at 205 n.7. They function to assist in healing by spiritual means alone. *Id.*
126. *Walker*, 47 Cal. 3d at 119, 763 P.2d at 855, 253 Cal. Rptr. at 4.
127. Defendant's Brief at 18-22, Walker v. Superior Court, 85 Cal. App. 3d 266, 222 Cal. Rptr. 87, (No. 24996)(1986)(review granted Mar. 27, 1986).
128. *Id.*
129. *Id.*
130. *Id.*
131. *Id.*
132. *Id.*
133. *Walker*, 47 Cal. 3d at 118, 763 P.2d at 855, 253 Cal. Rptr. at 5.
134. *Id.*
135. *Id.*

slaughter and felony child endangerment.[136] First, the opinion discussed whether the religious exemption in California Penal Code section 270 excused the defendant's conduct under sections 273a and 192.[137] Then the court discussed whether prayer treatment constituted criminal negligence as a matter of law.[138] Next, the court analyzed the case in light of the free exercise clause of the first amendment.[139] Finally, the court discussed the defendant's due process claim of a right to fair notice of illegal conduct.[140]

1. Section 270 as a Bar to Prosecutions Under Sections 273a and 192

The defendant argued that if substitution of spiritual treatment for medical care is lawful under Penal Code section 270, then the same conduct should not be considered unlawful under other Penal Code sections, specifically sections 192 and 273a.[141] To determine whether California Penal Code section 270 provides a defense to the defendant's charges under sections 273a and 192, the court first had to determine whether substitution of spiritual treatment for medical care is lawful under section 270.[142] The court reevaluated the *Arnold* dictum which stated that other remedial care constituted an additional necessity that parents must provide their children and not a substitute for medical care under section 270.[143]If prayer treatment did not constitute an acceptable alternative under section 270, the defendant's sole reliance on spiritual treatment was unlawful under section 270 and could not bar her prosecution for child endangerment or involuntary manslaughter.[144]

In reevaluating *Arnold,* the court looked first to the 1925 amendment of section 270, which added the phrase "other remedial care," and analyzed whether the legislature intended "other remedial care" to function as a *substitute* for medical attendance, or as an *additional*

136. *Id.*
137. *Walker*, 47 Cal. 3d at 120-29, 763 P.2d at 856-66, 253 Cal. Rptr. at 5-15.
138. *Walker*, 47 Cal. 3d at 134-38, 763 P.2d at 866-69, 253 Cal. Rptr. at 15-18.
139. *Walker*, 47 Cal. 3d at 138-41, 763 P.2d at 869-71, 253 Cal. Rptr. at 18-20.
140. *Walker*, 47 Cal. 3d at 141-44, 763 P.2d at 871-73, 253 Cal. Rptr. at 20-22.
141. *Walker*, 47 Cal. 3d at 120, 763 P.2d at 856, 253 Cal. Rptr. at 5.
142. *Id.*
143. *Walker*, 47 Cal. 3d at 121, 763 P.2d at 857, 253 Cal. Rptr. at 6. *See also*, *Arnold*, 66 Cal. 2d at 452, 426 P.2d at 524, 58 Cal. Rptr. at 124.
144. *Walker*, 47 Cal. 3d at 120, 763 P.2d at 856, 253 Cal. Rptr. at 5.

necessity parents must provide children.[145] The court reasoned that the repetition of the word *or* to introduce both medical assistance and other remedial care, indicates that the latter does not represent an additional necessity parents must provide, but rather acts as an alternative to medical treatment.[146]

The court next considered the effect of the 1976 amendment to section 270.[147] The Assembly Office of Research analysis of the bill introducing the 1976 amendment lent further support to the majority's conclusion by stating that the 1976 amendment shielded parents who provide prayer in lieu of medical treatment from liability.[148] Relying in part on the Assembly Office of Research analysis to shed light on the legislature's purpose, the court found that the legislature intended to legalize other remedial care as an alternative to medical care for the purposes of section 270.[149] Thus, the court overruled the portion of *Arnold* which stated that other remedial care is required in addition to, and not in lieu of, medical treatment.[150] The court then stated that parents who utilize prayer treatment are exempted from the requirement to furnish medical care under section 270.[151]

Having held that substitution of prayer for medical care is lawful under section 270, the majority proceeded to analyze whether com-

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145. *Id.* "The fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law." Regents v. Public Employment Relations Bd., 41 Cal. 3d 601, 607, 715 P.2d 590, 593, 224 Cal. Rptr. 631, 634 (1986) (quoting T.M. Cobb Co. v. Superior Court, 36 Cal. 3d 273, 277, 682 P.2d 338, 340, 204 Cal. Rptr. 143, 145 (1984)). "Where . . . the language is clear there can be no room for interpretation." *Id.* (quoting Caminetti v. Pacific Mutual Life Ins. Co., 22 Cal. 2d 344, 353-54, 139 P.2d 908 (1943)).

146. *Walker*, 47 Cal. 3d at 121-22, 763 P.2d at 857, 253 Cal. Rptr. at 6. "[C]ourts should give significance to every word, phrase, and sentence of an act, and that any construction rendering certain words surplusage should be avoided." *Id.* (citing Palos Verdes Faculty Ass'n v. Palos Verdes Peninsula Unified School Dist., 21 Cal. 3d 650, 659, 580 P.2d 1155, 1159, 147 Cal. Rptr. 359, 363 (1978)). The court also stated that to rule differently would present the absurd holding that other remedial care represents an additional remedy added to the statute as an afterthought. *Walker*, 47 Cal. 3d at 122, 763 P.2d at 857, 253 Cal. Rptr. at 6.

147. *Walker*, 47 Cal. 3d at 122, 763 P.2d at 857-58, 253 Cal. Rptr. at 7.

148. *Id.* "The analysis stated: 'Under this bill, the parents may not be liable for failing to provide for the health of the child because they choose treatment by prayer rather than common medical treatment'. . ." *Id.* (quoting ASSEM. OFFICE OF RESEARCH, 1975-76 REG. SESS., 3D READING ANALYSIS OF ASSEM. BILL No. 3853 (1976)).

149. *Walker*, 47 Cal. 3d at 122-23, 763 P.2d at 858, 253 Cal. Rptr. at 7. The court recognized that committee reports are not dispositive of legislative intent. However, where reports do not conflict with the plain meaning of a statute, caucus analyses may present significant evidence of governmental purpose. *Walker*, 47 Cal. 3d at 122, 763 P.2d at 858, 253 Cal. Rptr. at 7. *See infra* notes 156-60 and accompanying text (discussing the purpose of section 270).

150. *Walker*, 47 Cal. 3d at 123, 763 P.2d at 858, 253 Cal. Rptr. at 7.

151. *Id.*

pliance with section 270 provides a defense to sections 273a and 192 charges.[152] The defendant argued that section 270 allows prayer treatment in cases where health care is *necessary*.[153] Therefore, the legislature must have intended to allow spiritual remedies for all illnesses, even in the life threatening situations governed by child endangerment and involuntary manslaughter laws.[154] Under this reasoning, the defendant's conduct should not incur felony liability for child endangerment or involuntary manslaughter.[155]

The court rejected this argument and stated that certain conduct, though legal in one statutory context, may give rise to liability under separate statutes created for different legislative purposes.[156] Therefore, the religious exemption in section 270 can only provide a parallel exemption from prosection under sections 192 and 273a if all three statutes share the same legislative objective.[157]

Citing *People v. Sorenson*,[158] the court concluded that the primary purpose of section 270 is to outline fiscal responsibilities.[159] In con-

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152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.* "Application of the rule that statutes in pari materia should be construed together is most justified, . . . in the case of statutes relating to the same subject matter that were passed at the same session of the legislature, especially if they were passed or approved or take effect on the same day, . . ." People v. Caudillo, 21 Cal. 3d 562, 585, 580 P.2d 274, 288, 146 Cal. Rptr. 859, 873 (1978). Penal Code section 273a was enacted in 1905 as part of the same bill which amended Penal Code section 270. 1905 Cal. Stat. Ch. 568, sec. 5 at 279. The 1905 act stated that the following code sections, which included both section 270 and 273a, all related to crimes against children. *Id.*

156. *See Walker*, 47 Cal. 3d at 123-24, 763 P.2d at 858-59, 253 Cal. Rptr. at 7-8. The court supported its contention by quoting People v. Black, 32 Cal. 3d 1, 5, 648 P.2d 104, 105, 184 Cal. Rptr. 454, 456 (1982): "When used in a statute, words must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear, and the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole." *Id.*

157. *See Walker*, 47 Cal. 3d at 124, 763 P.2d at 859, 253 Cal. Rptr. at 8. *See also* Milligan v. City of Laguna Beach, 34 Cal. 3d 829, 835, 670 P.2d 1121, 1125, 196 Cal. Rptr. 38, 42 (1983) (stating that only when legislative policies are symmetrical can one expect code sections to be symmetrical). *But see* CAL. PENAL CODE § 4 (West 1988) (stating that the common law rule of strict statutory construction does not apply in California; instead, a law should be construed with regard to language, justice, and legislative intent); People v. Caudillo, 21 Cal. 3d 562, 585, 580 P.2d 274, 287, 146 Cal. Rptr. 854, 872 (1978) (stating that similar statutes should be construed in light of one another, and that when statutes are in pari materia, similar phrases appearing in each should be given the same meanings).

158. 68 Cal. 2d 280, 437 P.2d 495, 66 Cal. Rptr. 7 (1968). *See supra* notes 109-11 and accompanying text (discussing the California Supreme Court's rationale in *Sorenson*).

159. *Walker*, 47 Cal. 3d at 126, 763 P.2d at 860, 253 Cal. Rptr. at 9. *See also* County of Ventura v. George, 149 Cal. App. 3d 1012, 1014, 197 Cal. Rptr. 245, 246-47 (1983); Lyons v. Municipal Court, 75 Cal. App. 3d 829, 842-43, 142 Cal. Rptr. 449, 454-55 (1977)(supporting the court's finding that section 270 punishes failure to provide for children). *See generally* Note, *Criminal Nonsupport and a Proposal for an Effective Felony-Misdemeanor Distinction*, 37 HASTINGS L.J. 1075, 1079 (1986).

trast, the court stated that sections 273a and 192 serve as guidelines for punishment of neglectful parents and are designed to protect citizens from immediate and grievous harm.[160]

Since the court found different purposes underlying section 270 and sections 192 and 273a, the majority was not required to apply the religious exemption in section 270 to sections 273a and 192.[161] Further, the court found that the legislature did not intend to allow religious exemptions to charges under sections 273a and 192 which arise when a "gravely ill child lies dying for want of medical attention."[162] The court concluded that the legislature allowed provision of prayer treatment to avert misdemeanor liability for failure to meet financial responsibilities for child support, but not to bar felony prosecutions for child endangerment and involuntary manslaughter.[163]

The defendant argued that because the 1976 amendment to section 270 was passed in response to *Arnold*, a manslaughter case, the amendment was intended to bar manslaughter liability.[164] The court, however, found that the legislature intended the amendment to affect only misdemeanor liability of parents, and not their exposure to felony charges under other penal code sections.[165] The 1976 amendment did bar misdemeanor liability for substitution of spiritual treatment for medical care, and thus clearly barred misdemeanor manslaughter charges premised on a violation of section 270.[166] Nevertheless, the court concluded that the legislature left untouched the possibility of felony manslaughter prosecutions based on criminal negligence.[167]

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160. *Walker*, 47 Cal. 3d at 126, 763 P.2d at 860, 253 Cal. Rptr. at 9.
161. *Walker*, 47 Cal. 3d at 129, 763 P.2d at 862, 253 Cal. Rptr. at 11-12.
162. *Walker*, 47 Cal. 3d at 126, 763 P.2d at 860, 253 Cal. Rptr. at 9.
163. *Id.*
164. *Walker*, 47 Cal. 3d at 127, 763 P.2d at 861, 253 Cal. Rptr. at 10. *See* SEN. COMM. ON JUDICIARY, 1975-76 REG. SESS., ANALYSIS OF ASSEM. BILL No. 3842 ; SEN. REPUBLICAN CAUCUS, 1975-76 REG. SESS., 3D READING ANALYSIS OF ASSEM. BILL No. 3843. The defendant rested her contention that the amendment was passed to bar manslaughter prosecutions against Christian Scientists on two annual reports of the Christian Science Committee on Publication for Southern California issued in 1920 and 1925. *Walker*, 47 Cal. 3d at 127, 763 P.2d at 861, 253 Cal. Rptr. at 10. However, the court considered these reports too far removed from the legislative process to lend support. *Id.* Also, the 1920 report pre-dated the 1925 amendment and was, therefore, irrelevant. *Id. Compare supra* notes 145-46 and accompanying text (discussing the legislative intent behind the 1925 amendment to section 270), *with Walker*, 47 Cal. 3d at 127, 763 P.2d at 861, 253 Cal. Rptr. at 10.
165. *Walker*, 47 Cal. 3d at 127, 763 P.2d at 861, 253 Cal. Rptr. at 10.
166. *Walker*, 47 Cal. 3d at 127-28, 763 P.2d at 861-62, 253 Cal. Rptr. at 10-11.
167. *Id. But see supra* notes 48-61 and accompanying text (explaining the common law principle that prayer treatment does not constitute criminal negligence). A staff analysis of

2. *General Legislative Policy on Religious Defenses to Child Neglect and Abuse*

The defendant next argued that the many other civil and criminal statutes exempting prayer treatment from the definition of child neglect indicated a legislative intent to exempt administration of prayer treatment from conduct within the reach of sections 192 and 273a.[168] The court first analyzed child protection statutes to determine whether the legislature intended to allow prayer treatment as an appropriate remedy for children's serious illnesses.[169] Specifically, the court relied on statutes defining neglected or abused children for purposes of the state child welfare services program,[170] the Office of Child Abuse Prevention,[171] and the reporting of suspected child abuse.[172] These definitions state that children treated by prayer shall not, "for that reason alone," be considered abused or neglected.[173] The court interpreted the words "for that reason alone" to mean that a child receiving prayer treatment may still be considered abused or neglected if the provision of prayer treatment combined with a grave illness results in a serious threat to the well-being of the child.[174]

Assembly Bill 3842 stated:

> The bill appears unclear in two respects. First, section 273a makes it a wobbler (10 year top) for any person to permit a minor under his care or custody to suffer any physical harm or injury. Thus, though the parents may not be liable for failing to provide for the health of the child because they choose treatment by prayer rather than common medical treatment, they would be liable if the child suffered any physiological harm. Second, no exception is made under the manslaughter statutes for parental liability should the child die. If treatment by prayer is to be recognized in part, the parents should not be liable for the results of using a permitted mode of healing.

ASSEM. COMM. ON CRIMINAL JUSTICE, 1975-76 REG. SESS., ANALYSIS OF ASSEM. BILL 3843. Similar statements appear in ASSEM. OFFICE OF RESEARCH, 1975-76 REG. SESS., 3D READING ANALYSIS OF ASSEM. BILL 3843.

168. *Walker*, 47 Cal. 3d at 129-30, 763 P.2d at 863, 253 Cal. Rptr. at 12. *See* CAL. WELF. & INST. CODE §§ 300, 300.5, 7104, 16500, 16509, 16509.1, 18960.5, 18964(f)(3), 14059 (West 1980, 1984 & Supp. 1990).

169. *Walker*, 47 Cal. 3d at 130-34, 763 P.2d at 863-66, 253 Cal. Rptr. at 12-15.

170. *Id. See* CAL. WELF. & INST. CODE §§ 16500-16525.30 (West Supp. 1990).

171. *Walker*, 47 Cal. 3d at 132, 763 P.2d at 863-64, 253 Cal. Rptr. at 13; *See* CAL. WELF. & INST. CODE §§ 18950-18964.6 (West Supp. 1990).

172. *Walker*, 47 Cal. 3d at 130, 763 P.2d at 863, 253 Cal. Rptr. at 12; *See* CAL. PENAL CODE §§ 11165-11174.3 (West Supp. 1990).

173. *Walker*, 47 Cal. 3d at 130, 763 P.2d at 863, 253 Cal. Rptr. at 12; CAL. WELF. & INST. CODE §§ 16509.1, 18950.5 (West Supp. 1990); CAL. PENAL CODE § 11165.2 (West Supp. 1990).

174. *Walker*, 47 Cal. 3d at 130-31, 763 P.2d at 863-64, 253 Cal. Rptr. at 12-13. The court further supported its with contention section 16509 of the Welfare and Institutions Code which

The court found that the legislative intent, expressed throughout California child welfare statutes, clearly provides that when a child's health is seriously jeopardized, the right of a parent to rely exclusively on prayer must yield.[175] Therefore, the court found that neither section 270 itself, or California's child protection laws, show a legislative intent to relate section 270's religious exemption to sections 273a and 192.[176]

3. *Prayer Treatment as Criminal Negligence*

For the defendant to be guilty of involuntary manslaughter, her actions must be found unlawful or criminally negligent.[177] Since the court determined that Mrs. Walker's conduct was not unlawful under section 270, it had to find that she was criminally negligent to establish a conviction for involuntary manslaughter.[178] The court held that a sincere belief in the efficacy of prayer healing will not prohibit a finding of criminal negligence.[179] In allowing religiously motivated conduct to constitute criminally negligent behavior, the court rejected the common law doctrines of *Wagstaffe* and *Sanford* which held that a parent relying exclusively on prayer healing for a child was not

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reads: "Cultural and religious child-rearing practices and beliefs which differ from general community standards shall not in themselves create a need for child welfare services unless the practices present a specific danger to the physical or emotional safety of the child." CAL. WELF. & INST. CODE § 16509 (West Supp. 1990). In addition, section 300 of the Welfare and Institutions Code, which delineates the circumstances under which a child can be removed from parental custody and declared a dependant of the court, states that in making custody determinations, the court should give deference to the parent's choice of spiritual treatment and not assume jurisdiction unless necessary to protect the minor from suffering serious physical harm or illness. CAL. WELF. & INST. CODE § 300 (West Supp. 1990). *See generally Review of Selected 1987 California Legislation*, 19 PAC. L.J. 645, 652 n.14 (1988) (listing the factors a court must consider when determining if the type of care provided was proper under the circumstances); Review of Selected 1987 California Legislation, 19 PAC. L.J. 645, 650-58 (1988) (discussing the legislative intent behind the most recent amendments to section 300 of the California Welfare and Institutions Code). The court also used section 16509.1 of the Welfare and Institutions Code which states: "Cultural and religious child-rearing practices and beliefs which differ from general community standards shall not in themselves create a need for child welfare services unless the practices present a specific danger to the physical or emotional safety of the child." *Walker*, 47 Cal. 3d at 131, 763 P.2d at 864, 253 Cal. Rptr. at 13.

175. *Walker*, 47 Cal. 3d at 133, 763 P.2d at 866, 253 Cal. Rptr. at 15.

176. *Walker*, 47 Cal. 3d at 134, 763 P.2d at 866, 253 Cal. Rptr. at 15.

177. *See supra* notes 85-90 and accompanying text (discussing requirements for a finding of guilt under charges of involuntary manslaughter).

178. *Walker*, 47 Cal. 3d at 135, 763 P.2d at 866, 253 Cal. Rptr. at 15.

179. *Walker*, 47 Cal. 3d at 138, 763 P.2d at 869, 253 Cal. Rptr. at 18.

criminally negligent as a matter of law.[180] The majority observed that medical science has advanced to the point where it may be more fully relied upon than in the days of *Wagstaffe* when blisters, leeches, and calomel were the common medical practice, and that consequently it is reasonable to presume that the community standard for criminal negligence has advanced in accord with medical discovery.[181] Therefore, the court held that nineteenth century common law cases fail to establish a contemporary defense to charges of criminal negligence arising out of the death of a child treated by prayer alone.[182]

Next, the court addressed whether the defendant's conduct was criminally negligent under the California definition of that term established in *People v. Penny,*[183] a manslaughter case that arose when an unlicensed beauty consultant inadvertently poisoned her patient while trying to remove facial wrinkles.[184] In *Penny*, the California Supreme Court held that criminal negligence should be determined by looking to the objective reasonableness of the defendant's conduct.[185] Thus in *Walker*, the defendant's subjective intent to heal her daughter could not save her from committing criminal negligence, if a jury found her course of conduct objectively unreasonable.[186]

The court rejected the defendant's contention that no reasonable jury could characterize prayer treatment as criminally negligent.[187] The defendant also asserted that various statutory exemptions enacted for Christian Scientists demonstrate a legislative acceptance of the reasonableness of spiritual treatment.[188] However, as discussed above, the court found that the child protection laws referred to by the

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180. *Walker*, 47 Cal. 3d at 136, 763 P.2d at 867, 253 Cal. Rptr. at 16. *See supra* notes 49-61 and accompanying text (discussing *Sanford* and *Wagstaffe*).

181. *Walker*, 47 Cal. 3d at 136, 763 P.2d at 867, 253 Cal. Rptr. at 16-17.

182. *Walker*, 47 Cal. 3d at 136, 763 P.2d at 867-68, 233 Cal. Rptr. at 16-17.

183. 44 Cal. 2d 861, 285 P.2d 926 (1955).

184. *See Walker*, 47 Cal. 3d at 136, 763 P.2d at 868, 253 Cal. Rptr. at 17; People v. Penny, 44 Cal. 2d 861, 880, 285 P.2d 926, 928 (1955). *See also*, People v. Burroughs, 35 Cal. 3d 824, 836, 828, 836, 678 P.2d 894, 201 Cal. Rptr. 314, 326-27 (1984); People v. Watson, 30 Cal. 3d 290, 296, 637 P.2d 279, 283, 179 Cal. Rptr. 43, 47 (1981). *See generally* LAFAVE & SCOTT, CRIMINAL LAW 590 n.23 (1972) (discussing the standard for criminal negligence).

185. *See Penny*, 44 Cal. 2d at 879, 285 P.2d at 926; *Walker*, 47 Cal. 3d at 136, 763 P.2d. at 868, 253 Cal. Rptr. at 17.

186. *Walker*, 47 Cal. 3d at 137, 763 P.2d at 868, 253 Cal. Rptr. at 17.

187. *Id. But see,* State v. Sanford, 99 Me. 441, 452, 59 Atl. 597, 600-01 (1905) (stating that the reasonableness of the defendant's conduct should not depend on the jury's belief about the efficacy of prayer treatment).

188. *Walker*, 47 Cal. 3d at 137, 763 P.2d at 869, 253 Cal. Rptr. at 17.

defendant reflect not an endorsement of the efficacy or reasonableness of prayer treatment, but merely a willingness to accommodate religious practice when children do not face serious physical harm.[189] Thus, the court declined to find that, as a matter of law, the defendant's conduct was not criminally negligent.[190]

4. Prayer Healing as Free Exercise of Religion

The court held that the defendant's actions were not constitutionally protected under the free exercise clause, because the compelling state interest in preserving a child's life outweighs the parent's religious interest in practicing prayer healing, and less restrictive alternatives for child protection are unavailable.[191] The court first determined that a compelling state interest in protecting children's lives exists.[192] Protecting children's lives allows them to mature fully and become the citizens upon whom the perpetuation of democracy depends.[193] Then, acknowledging that the defendant acted in accord with genuine faith, the court found that since use of medicine does not constitute "sin" for a Christian Scientist, the religious interest is outweighed by the governmental need to protect its citizens.[194] The court went even further by stating that the governmental interest in child safety justifies any form of religious imposition.[195] In reaching this conclusion the court relied on *Prince v. Massachusetts*, which stated that the right to freely practice religion does not include liberty to expose a child to ill health or death.[196]

Having concluded that the compelling state interest in preserving a child's life outweighs the parent's religious interest in practicing prayer healing, the court next stated that allowing criminal prosecutions advanced this state interest in the manner least intrusive to

189. *Walker*, 47 Cal. 3d at 138, 763 P.2d at 868, 253 Cal. Rptr. at 17-18. *See supra* notes 168-76 and accompanying text (discussing the court's interpretation of legislative intent to not recognize the reasonableness of prayer treatment).
190. *Walker*, 47 Cal. 3d at 138, 763 P.2d at 869, 253 Cal. Rptr. at 18.
191. *Walker*, 47 Cal. 3d at 141, 763 P.2d at 871, 253 Cal. Rptr. at 20.
192. *Walker*, 47 Cal. 3d at 139, 763 P.2d at 869, 253 Cal. Rptr. at 18.
193. *Walker*, 47 Cal. 3d at 139, 763 P.2d at 869, 253 Cal. Rptr. at 18-19.
194. *Walker*, 47 Cal. 3d at 139, 763 P.2d at 870, 253 Cal. Rptr. at 19.
195. *Id.*
196. *Walker*, 47 Cal. 3d at 140, 763 P.2d at 870, 253 Cal. Rptr. at 19. However, the *Walker* court expanded the holding in *Prince,* which allowed religious infringement only when necessary to protect child safety and limited its holding to the facts presented in the *Prince* case. Prince v. Massachusetts, 321 U.S. 158, 171 (1943).

parental religious interests.[197] The majority found three reasons why the only alternative for child protection advanced by the defendant—civil dependency hearings[198]—does not advance the state interest in a less intrusive manner than criminal sanctions.[199] First, the court reasoned that parents would rather face criminal liability than have the state take their child.[200] Second, the court noted that cases like *Walker* will not come to the attention of authorities in time to take protective measures.[201] Finally, since criminal liability attaches only when the child is actually endangered or dies, the penalty is narrowly tailored to apply only in cases where the government interest in protecting the welfare of a child is paramount.[202] Therefore, because the state's need to protect children's lives is compelling, and the California statutory scheme upholds this governmental purpose in the least intrusive manner, the defendant's prosecution does not violate the free exercise clause.[203]

5. *The California Statutory Scheme Analyzed Under Due Process*

The defendant also contended that sections 192 and 273a, when read together, violate her constitutional right to fair notice by failing to provide standards for conduct, police enforcement, and ascertainment of guilt.[204] The court first observed that the statutes are clearly not meant to be read together, but rather constitute three separate provisions which clearly identify their respective proscriptions.[205] However, even if read together, the three statutes create no ambiguity for law enforcement officials.[206] Rather than allowing prosecutors

197. *Walker*, 47 Cal. 3d at 141, 763 P.2d at 871, 253 Cal. Rptr. at 20.

198. *See* CAL. WELF & INST. CODE § 300 (West Supp. 1990) (discussing civil dependency hearings). If the court determines that a parent is not properly caring for a child, the court can adjudge that the child is a dependant of the court and remove the child from the parent's custody. *Id.*

199. *Walker*, 47 Cal. 3d at 140-41, 763 P.2d at 870-71, 253 Cal. Rptr. at 19-20.

200. *Walker*, 47 Cal. 3d at 140, 763 P.2d at 870, 253 Cal. Rptr. at 19-20.

201. *Walker*, 47 Cal. 3d at 141, 763 P.2d at 871, 253 Cal. Rptr. at 20.

202. *Id.*

203. *Id.* The majority did not address the prosecution's contention that section 270 violates the establishment clause. *Id.* However, Justice Mosk discusses possible establishment clause issues in his concurrence. *Walker*, 47 Cal. 3d at 144, 763 P.2d at 873, 253 Cal. Rptr. at 22 (Mosk, J., concurring). *See infra* notes 240-53 and accompanying text (discussing Justice Mosk's concurrence in *Walker*).

204. *Walker*, 47 Cal. 3d at 141, 763 P.2d at 871, 253 Cal. Rptr. at 20.

205. *Id.*

206. *Walker*, 47 Cal. 3d at 142, 763 P.2d at 871, 253 Cal. Rptr. at 20.

unbridled discretion to follow their personal predilections, sections 192 and 273a require law enforcement officials to make only one discretionary judgment: "Whether to prosecute conduct otherwise within the reach of felony statutes in view of the provisions of section 270."[207]

The defendant also argued that the statutory scheme fails to provide her fair notice in two other ways.[208] First she contended that since, as interpreted by the court, the statutes allow prayer treatment for nonserious illnesses, but not for cases in which a child's health is seriously threatened, sections 192 and 273a provide no notice of the point at which her lawful prayer treatment becomes unlawful.[209] In effect, the defendant argued sections 192, 273a, and 270 require her at "peril of life, liberty, and property to speculate as to the meaning of penal statutes."[210] In response, the court found that a law does not violate the notice requirements of due process when it requires an individual to estimate when conduct will incur criminal liability.[211] As long as sections 270, 273a, and 192 indicate that one must estimate at which point prayer treatment alone becomes criminally negligent, the statutes meet the requirements of fair notice under the due process doctrine.[212]

Second, the defendant argued that since section 270 allows the substitution of spiritual treatment for medical care, and such a substitution constitutes criminal behavior under sections 192 and 273a, the statutes violate due process by issuing inexplicably contradictory commands.[213] The court replied by stating that California requires citizens to apprise themselves not only of statutory language, but also of legislative history, judicial interpretations, and legislative intent.[214] The court stated that if a reasonable and practical construction can be given a statutory scheme, it will not be held void for vagueness.[215] The majority found that the protective purposes of sections 192 and 273a are so clearly distinguishable from the financial

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207. *Id.*
208. *Walker*, 47 Cal. 3d at 142, 763 P.2d at 872, 253 Cal. Rptr. at 21.
209. *Walker*, 47 Cal. 3d at 142, 763 P.2d at 871-72, 253 Cal. Rptr. at 20-21.
210. *Walker*, 47 Cal. 3d at 142, 763 P.2d at 871-72, 253 Cal. Rptr. at 21 (citing Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939)).
211. *Walker*, 47 Cal. 3d at 142, 763 P.2d at 872, 523 Cal. Rptr. at 21 (relying on Nash v. United States, 229 U.S. 373, 377 (1913)).
212. *Walker*, 47 Cal. 3d at 143-44, 763 P.2d at 873, 253 Cal. Rptr. at 22.
213. *Walker*, 47 Cal. 3d at 142-43, 763 P.2d at 872, 253 Cal. Rptr. at 21. *See supra* notes 73-92 and accompanying text (discussing sections 192, 270, and 273a).
214. *Walker*, 47 Cal. 3d at 143, 763 P.2d at 872, 253 Cal. Rptr. at 21.
215. *Walker*, 47 Cal. 3d at 143, 763 P.2d at 872, 253 Cal. Rptr. at 21.

purposes of section 270 that these statutes cannot be said to issue inexplicable contradictory commands.[216] Thus, the court determined that the defendant's due process rights were not violated.[217]

C. Other Opinions

In a concurring and dissenting opinion, Justice Broussard agreed with the majority that the defendant may be charged with involuntary manslaughter under section 192.[218] However, he disagreed that child endangerment charges are appropriate when a parent has omitted to provide necessary medical attendance.[219] The Justice stated that the legislature clearly sought to preclude child endangerment liability of persons coming within the religious exemption in section 270.[220] To apply section 273a to those persons would defeat this legislative intent and render the religious exemption in section 270 meaningless.[221]

Justice Broussard reevaluated the majority's determination of the purposes of sections 270 and 273a.[222] He began by analyzing the statutes in light of the conduct they purport to proscribe.[223] The Justice found that the difference between the two statutes is that section 270 applies to willful failures to provide care, whereas section 273a punishes intentional, active conduct resulting in harm or endangerment of children.[224] Therefore, because the prosecution charged the defendant with failure to provide necessary care, section 270 should govern the defendant's conduct instead of section 273a.[225]

Justice Broussard then argued that even though sections 270 and 273a address different issues, they share the common purpose of

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216. *Walker*, 47 Cal. 3d at 143-44, 763 P.2d at 873, 253 Cal. Rptr. at 22. *See supra* notes 141-67 and accompanying text (discussing the different purposes of sections 192, 270, and 273a).

217. *Walker*, 47 Cal. 3d at 144, 763 P.2d at 873, 253 Cal. Rptr. at 22.

218. *Walker*, 47 Cal. 3d at 151, 763 P.2d at 878, 253 Cal. Rptr. at 27 (Broussard, J., concurring and dissenting).

219. *Id.* (Broussard, J., concurring and dissenting).

220. *Walker*, 47 Cal. 3d at 152, 763 P.2d at 878, 253 Cal. Rptr. at 27 (Broussard, J., concurring and dissenting).

221. *Id.* (Broussard, J., concurring and dissenting).

222. *Id.* (Broussard, J., concurring and dissenting).

223. *Walker*, 47 Cal. 3d at 152-53, 763 P.2d at 878-79, 253 Cal. Rptr. at 27-28 (Broussard, J., concurring and dissenting).

224. *Walker*, 47 Cal. 3d at 153, 763 P.2d at 880, 253 Cal. Rptr. at 29 (Broussard, J., concurring and dissenting).

225. *Walker*, 47 Cal. 3d at 153-54, 763 P.2d at 880, 253 Cal. Rptr. at 29 (Broussard, J., concurring and dissenting). "There can be no rational doubt that the Legislature intended that section 270 should be applicable where a parent fails to provide medical care endangering the health or person of a child." *Id.* (Broussard, J., concurring and dissenting).

avoiding child endangerment.[226] The language of section 270 mandates that parents provide *necessary* medical treatment.[227] Since medical treatment is only necessary when a child's health is endangered, section 270 must apply to child-endangering conduct as does section 273a.[228]

Justice Broussard expressly rejected the majority's contention that section 270 only serves as an economic regulation.[229] The legislative history of section 270 clearly indicated that section 270 functions to shield those parents who substitute prayer for medical care from liability.[230] To find that the legislature, by adding the 1925 and 1976 amendments to section 270, intended only to exempt parents from a duty to pay for medical care develops an absurd conclusion.[231] Justice Broussard found that both sections 270 and 273a apply to child endangerment.[232]

Since both statutes apply to child endangerment and both appear in the Penal Code, the sections must be construed together to harmonize the law.[233] Section 270 imposes criminal liability on parents who willfully *omit* to provide health care, thereby endangering their

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226. *Id.* (Broussard, J., concurring and dissenting) Since both statutes are Penal Code sections, they should be construed with reference to the entire statutory system in which they form a part in such a way as to achieve harmony among the sections. *Id.* (Broussard, J., concurring and dissenting) (citing Merrill v. Department of Motor Vehicles 71 Cal. 2d 907, 918, 458 P.2d 33, 37, 80 Cal. Rptr. 89, 96 (1969)).

227. *Walker*, 47 Cal. 3d at 153-54, 763 P.2d at 880, 253 Cal. Rptr. at 29 (Broussard, J., concurring and dissenting).

228. *Walker*, 47 Cal. 3d at 154, 763 P.2d at 880, 253 Cal. Rptr. at 29 (Broussard, J., concurring and dissenting).

229. *Id.* (Broussard, J., concurring and dissenting) Even though the third sentence of section 270 provides that a parent may still incur liability when another furnishes medical care, that sentence cannot be interpreted to prohibit criminal liability when no one provides the necessary support. *Id.* (Broussard, J., concurring and dissenting) In addition, the principle case relied on by the majority for their conclusion that the purpose of section 270 is reimbursement, states that: "[T]he principal statutory objectives are to secure support of the child" and to protect the public fisc. People v. Sorenson, 68 Cal. 2d 280, 287, 437 P.2d 495, 500, 66 Cal. Rptr. 7, 9 (1968).

230. *See Walker*, 47 Cal. 3d at 154, 763 P.2d at 880, 253 Cal. Rptr. at 29 (Broussard, J., concurring and dissenting). *See also Review of Selected 1976 California Legislation*, 8 PAC. L.J. 415, 422 (1977). An analysis of the bill introducing the 1976 amendment to section 270 states: "It is possible that a defendant parent who is exempt from prosecution under section 270 cannot be criminally negligent as a matter of law when the defendant's conduct is within scope of the exemption provided in section 273a." *Id.* at 423.

231. *Walker*, 47 Cal. 3d at 154, 763 P.2d at 880, 253 Cal. Rptr. at 29 (Broussard, J., concurring and dissenting).

232. *Id.* (Broussard, J., concurring and dissenting).

233. *See Walker*, 47 Cal. 3d at 154-55, 763 P.2d at 880, 253 Cal. Rptr. at 29 (Broussard, J., concurring and dissenting); People v. Caudillo, 21 Cal. 3d 562, 585, 580 P.2d 274, 287, 146 Cal. Rptr. 854, 872 (1978); *See generally* 2A SUTHERLAND, STATUTORY CONSTRUCTION § 51.03 at 67 (4th ed. 1984) (discussing statutory construction). *See supra* notes 156-57 (explaining statutory construction).

children, whereas section 273a imposes criminal liability for willfully *causing* child endangerment.[234] To avoid conflict between the two sections, section 273a should not be applied to cases where the parent omitted to perform duties imposed by section 270, but only in cases where the parents' active conduct endangers the child.[235] In *Walker*, the defendant's only active conduct was prayer and prayer is not prohibited by section 273a.[236]

Further, Justice Broussard found that applying section 273a to cases in which the section 270 prayer exemption applies creates a conflict in the Penal Code.[237] He reached this conclusion by finding that the spiritual treatment clause in section 270 demonstrates a legislative intent to exempt parents utilizing prayer treatment from the statutory requirement to provide necessary medical attendance.[238] If the religious exemption is not applied to section 273a, the legislative intent is totally defeated because section 273a would then make illegal the same conduct the legislature intended to legalize by enacting the religious exemption in section 270.[239]

Justice Mosk, writing a separate concurring opinion, supported the Attorney General's contention that the religious exemption in section 270 violates the establishment clause of the United States and California constitutions.[240] Justice Mosk argued that section 270 both discriminates among religions and fails the *Lemon* test.[241]

First, section 270 produces a bias in favor of certain religious beliefs.[242] As an illustration, Justice Mosk found two groups unprotected by section 270: parents who hold personal beliefs against the

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234. *Walker*, 47 Cal. 3d at 155, 763 P.2d at 880, 253 Cal. Rptr. at 29 (Broussard, J., concurring and dissenting).

235. *Id.* (Broussard, J., concurring and dissenting).

236. *Id.* (Broussard, J., concurring and dissenting). The United Church of Christ, the Methodist Church, and the Church of England are beginning to practice Christian healing. 92 CHRISTIAN SCIENCE SENTINEL 3-9 (January 29, 1990); *id.* 3-7 (January 22, 1990).

237. *Walker*, 47 Cal. 3d at 155, 763 P.2d at 880, 253 Cal. Rptr. at 29 (Broussard, J., concurring and dissenting).

238. *Id.* (Broussard, J., concurring and dissenting).

239. *Walker*, 47 Cal. 3d at 156, 763 P.2d at 881, 253 Cal. Rptr. at 30 (Broussard, J., concurring and dissenting).

240. *Walker*, 47 Cal. 3d at 144, 763 P.2d at 873, 253 Cal. Rptr. at 22 (Mosk, J., concurring). Justice Kaufman joined Justice Mosk's concurring opinion. *Id. See also* U.S. CONST. amend. I; CAL CONST. art. I, § 4 (creating the establishment clause). *See supra* notes 33-43 and accompanying text (discussing the establishment clause).

241. *See Walker*, 47 Cal. 3d at 148-49, 763 P.2d at 876, 253 Cal. Rptr. at 25 (Mosk, J., concurring). *See also* Lemon v. Kurtzman, 403 U.S. 602, 612-13. *See supra* notes 33-43 and accompanying text (explaining the requirements of the establishment clause).

242. *Walker*, 47 Cal. 3d at 146, 763 P.2d at 874, 253 Cal. Rptr. at 23 (Mosk, J., concurring).

use of medicine, but who are unaffiliated with a "recognized" religion, and parents who belong to sects without accredited prayer practitioners.[243] A statute that discriminates between religions cannot stand unless it serves a compelling state interest.[244] Justice Mosk found that the only discernable state interest in the religious exemption of section 270 is accommodation of Christian Science practice.[245] Accommodation may be considered a legitimate state objective when codified to preserve religious neutrality.[246] However, he argued that the legislative attempt to accommodate religion in section 270 manifests only a denominational preference in the face of indistinguishable religious conduct.[247] Therefore, Justice Mosk found the motive of the legislature noncompelling and determined that the statute is unconstitutional when strictly scrutinized.[248]

Justice Mosk further supported his analysis by applying the *Lemon* test.[249] He reasoned that because the religious exemption in section 270 reflects a nonsecular preference, the state intended religious accommodation.[250] Thus, section 270 fails the first *Lemon* prong by having a nonsecular purpose.[251] Further, since the wording of section 270 neatly accommodates the organization of the Christian Science religion—which accredits practitioners—while precluding use of prayer by other faiths, the statute illegally advances a religion.[252] Finally,

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243. *Id.* (Mosk, J., concurring).

244. *Walker*, 47 Cal. 3d at 148, 763 P.2d at 876, 253 Cal. Rptr. at 25 (Mosk, J., concurring).

245. *Id.* (Mosk, J., concurring).

246. *See id.* (Mosk, J., concurring). *See also* Sherbert v. Verner, 374 U.S. 398, 409 (1963).

247. *Walker*, 47 Cal. 3d at 148, 763 P.2d at 876, 253 Cal. Rptr. at 25 (Mosk, J., concurring). However, "It may be argued that a valid secular purpose is served by limiting the exemption under [section 270] to parents who are members of recognized churches and denominations because of the risk that a parent whose conduct is actually criminal may in bad faith assert the exemption as a defense." *Review of Selected 1976 California Legislation*, 8 PAC. L.J. 415, 422-24 (1977) (analyzing the bill which introduced the 1976 amendment to section 270).

248. *Walker*, 47 Cal. 3d at 148, 763 P.2d at 876, 253 Cal. Rptr. at 25 (Mosk, J., concurring).

249. *See Walker*, 47 Cal. 3d at 149, 763 P.2d at 877, 253 Cal. Rptr. at 26 (Mosk, J. concurring). *See also* Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971). *See supra* notes 34-38 and accompanying text (discussing the *Lemon* test).

250. *Walker*, 47 Cal. 3d at 149, 763 P.2d at 877, 253 Cal. Rptr. at 26 (Mosk, J., concurring).

251. *Id.* (Mosk, J., concurring). The *Lemon* test requires that the whole law have a secular purpose. *Lemon*, 403 U.S. at 612-613. The case opinion does not preclude certain sections of a statute from allowing rational religious accommodation. *Id.*

252. *Walker*, 47 Cal. 3d at 150, 763 P.2d at 877, 253 Cal. Rptr. at 26 (Mosk, J., concurring). *Lemon* requires a statute to have the *primary* effect of advancing religion before the law is found unconstitutional. *Lemon*, 403 U.S. at 612-13. Since Mosk's majority opinion holds that the primary purpose of section 270 is to ensure parents meet their financial

Justice Mosk found that the statute violates the third *Lemon* prong by requiring law enforcement officials to determine whether a parent belongs to a "recognized" religion utilizing "duly accredited" practitioners, thereby excessively entangling the state with religion.[253]

III. Legal Ramifications

The court's decision in *Walker* is representative of a California judicial trend toward expanding civil and criminal liability at the expense of organized religion.[254] The majority intended to protect child safety by mandating medical attention for a child's serious illness.[255] However, the court's decision may not accomplish this result. Further, the opinion may create due process clause problems. By applying an objective standard for determining criminal negligence in cases involving religious defenses, the court may have violated the free exercise clause.[256] Finally, the decision may compel legislative action.[257]

A. Walker Fails to Protect Child Safety

Criminal sanctions may not deter parents, who believe they have witnessed the effective results of spiritual treatment, from praying for their children in lieu of providing medical care.[258] Jail terms

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responsibility, his argument in the concurring opinion conflicts with the majority's view. *Walker*, 47 Cal. 3d at 124, 763 P.2d at 859, 253 Cal. Rptr. at 8.

253. *Walker*, 47 Cal. 3d at 150, 763 P.2d at 877, 253 Cal. Rptr. at 26 (Mosk, J., concurring).

254. *See also* Molko v. Holy Spirit Ass'n for the Unification World Christianity, No. S.F. 25038, Oct. 17, 1988 (allowing a church to be sued for fraud in connection with recruitment activities); Davis v. United States, No. 87-4170, Nov. 14, 1988 (holding that a parent's financial contribution to their children's missionary activities are not tax deductible as charitable contributions). *See also* Reidinger, *Puncturing the Faith Defense*, A.B.A. J., Feb. 1989 at 89.

255. *Walker*, 47 Cal. 3d at 139, 763 P.2d at 870, 253 Cal. Rptr. at 19.

256. Petition for Writ of Certiorari at 20, Walker v. Superior Court, 42 Cal. 3d 112, 763 P.2d 852, 253 Cal. Rptr. 1 (1988) (No. S.F. 24996). *Accord* Commonwealth v. Barnhardt, 497 A.2d 616, 623 (Pa. Super. 1985).

257. *See* A.B. 2325, 1989-90 Cal. Legis., 1st. Reg. Sess. (amended April 25, 1989) (proposing amendment to section 270 of the California Penal Code).

258. Memorandum from Sherryl Michaelson to the ACLU Legislative Policy Committee (March 14, 1989) (on file at PLJ). A survey of over 10,000 documented healings through Christian Science treatment over the last 20 years include many of children who were medically diagnosed. *Id.* The diagnosed conditions that were healed entirely through prayer included, among others, cancer, polio, pneumonia, acute appendicitis, diabetes, heart disease, blindness, meningitis, degenerative arthritis, leukemia, multiple sclerosis, kidney disorders, gangrene, and epilepsy. Letter from the First Church of Christ Scientist, Santa Rosa to the Santa Rosa

incurred after the death of a child, then, serve only to punish a parent already suffering from grief and loss, rather than to protect children. *Prince v. Massachusetts* allows the government to infringe on parental religious practices to protect children, but should not be read as allowing the punishment of parents for their religious beliefs.[259] The *Walker* court might have better protected child safety through reliance on custody hearings held before serious injury or death occurs.[260] During a custody hearing, the court determines whether a parent is adequately supplying his child's needs.[261] If the court finds the child needs medical attention, and the parent refuses to supply medical care, the court can relieve the parent of custody of the child until medical care is no longer necessary.[262]

Contrary to the opinions expressed by the majority in *Walker*,[263] existing laws insure that custody hearings occur in time to prevent serious harm to the child.[264] First, child abuse reporting statutes reduce the risk to child safety by requiring parents to promptly report certain serious illnesses, and their choice to use prayer treatment, to the County Health Department.[265] Also, others who become aware that a child is suffering from a reportable disease must report their knowledge to the proper officials.[266] Whereas parents sincerely believing in the efficacy of spiritual healing may fail to take their child to a doctor regardless of a judicial decree mandating medical care, such parents, believing prayer will heal their child, should not fear

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Community About the Middleton-Rippberger Case (undated) (on file at PLJ). Over the last twenty years, the *Christian Science Journal* and *Sentinel* have published testimonials of over 6300 healings. *Id.* At least 322 of these documented healings involved healings of children that had been medically diagnosed. *Id.*; Proposed Legislation Clarifying Recognition of Spiritual Healing, submitted to the California legislature by the Christian Science Committee on Publication (April 11, 1989) (on file at PLJ).

259. *See* Prince v. Massachusetts, 321 U.S. 158, 168; Sherbert v. Verner, 374 U.S. 398, 409-410 (1963).

260. Memorandum from Sherryl Michaelson to the ACLU Legislative Policy Committee (March 14, 1989)(on file at PLJ).

261. *See* CAL. WELF. & INST. CODE § 300(a) (West Supp. 1990).

262. *Id.*

263. *See supra* notes 198-203 and accompanying text (discussing the majority's opinion on the effectiveness of existing child abuse laws).

264. *See supra* notes 198-203 and accompanying text (discussing the majority's opinion on the effectiveness of existing child abuse laws).

265. *See* CAL. HEALTH & SAFETY CODE § 3125 (West 1989). *See also* Christian Science Committee on Publication for Northern California, *Legal Rights and Obligations of Christian Scientists in California*, 17-18 (1988).

266. 17 CAL. CODE REGS. § 2500 (1989). Section 2500 also lists diseases and conditions which must be reported. *Id.* These diseases must be reported by anyone having knowledge of them. 17 CAL. CODE REGS. § 2504 (1989).

reporting symptoms of serious illnesses to health authorities.[267] Therefore, custody hearings would better serve the courts articulated objective of protecting children than would criminal sanctions. With child custody hearings, a parents' only punishment would be the temporary deprivation of their children; the children would be treated with medicine before their health was seriously threatened.

B. Due Process Clause Problems

Walker may violate the due process clause by allowing parents to utilize prayer treatment for mild ailments but not for serious illnesses, thus leaving an ambiguity as to when exactly spiritual treatment alone becomes unlawful.[268] By failing to provide clear guidelines for legal conduct, the statute may be void for vagueness.[269] The *Walker* court's response to these due process concerns sets forth two conflicting guidelines.[270] First, the majority allows parents to subjectively determine when medical attention becomes necessary based on individual past experience.[271] At the same time, the court requires that parents objectively determine when a reasonably prudent person would feel compelled to seek medical aid.[272] The contradiction of requiring parents to rely on both subjective and objective standards poses two different problems. First, the decision arrived at by a parent based on subjective criteria will most likely differ from a determination based on objective criteria, especially in the case of a parent who has successfully relied on prayer treatment in the past. The *Walker*

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267. If parents will not supply medical treatment to their children because they believe spiritual treatment is more effective, they may now be less likely to report serious symptoms because *Walker* allows parents to be criminally prosecuted if their efforts fail. Therefore, under *Walker,* authorities might be less likely to learn of serious illnesses in time to save children than under pre-existing laws.

268. *Walker*, 47 Cal. 3d at 142, 763 P.2d. at 871-72, 253 Cal. Rptr. at 20-21.

269. *See supra* notes 11-15 and accompanying text (explaining the void for vagueness doctrine).

270. *Walker*, 47 Cal. 3d. at 142, 763 P.2d at 871-72, 253 Cal. Rptr. at 20-21. *Compare* Nash v. United States, 229 U.S. 373, 377 (1913) *with* People v. Penny, 44 Cal. 2d 861, 879-80, 285 P.2d 926 (1955) (describing the difference between the subjective and objective standards).

271. *Walker*, 47 Cal. 3d at 142, 763 P.2d at 872, 253 Cal. Rptr. at 21. "An act causing death may be murder, manslaughter, or misadventure according to the degree of danger attending it, by common experience in the circumstances known to the actor." Nash v. United States, 229 U.S. 373, 377 (1913). *See id.* at 377 (articulating the subjective standard).

272. *Walker*, 47 Cal. 3d at 137, 763 P.2d at 868, 253 Cal. Rptr. at 17. *See* People v. Penny 44 Cal. 2d 861, 879-80, 285 P.2d 926 (1955) (defining criminal negligence). *See also supra* notes 182-85 and accompanying text (discussing the objective standard for criminal negligence in *Walker*).

court's decision sets no guidelines for determining whether the subjective or objective standard controls when they conflict. Second, even if the court clarified its holding to state that the objective standard controls, citizens would have difficulty in determining when a reasonably prudent person would feel compelled to seek medical aid. Ordinary persons have no training to make medical diagnoses. Further, according to Dr. Eugene D. Robin, even a professional physician might not have accurately diagnosed the onset of the childhood meningitis contracted by Shauntay Walker.[273] In *Walker*, the court's determination of a reasonably prudent person would then appear to be someone with the benefit of hindsight. Thus, the court leaves parents no clear guidelines on when a child must be given medical attendance to avoid criminal liability, requiring parents to speculate at peril of life, liberty, and property as to the meaning of the law in violation of their due process rights.[274]

C. Acting Pursuant to Religious Beliefs Can Now Constitute Criminal Negligence

From early common law, religious beliefs constituted a defense to charges of criminal negligence.[275] *Wagstaffe* held that where a difference of opinion existed on the proper course of action, a person could not be convicted of criminal negligence for not following majority opinion.[276] Thus, minority religious views on proper health care constituted a defense to charges of criminal negligence under *Wagstaffe*.[277] The court in *Walker* stated that medical science has now advanced to the point where it must be relied on in every serious case; any other opinion regarding proper health care techniques may be considered unreasonable and, therefore, criminally negligent.[278]

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273. Robin, *Second Opinion*, The Press-Enterprise, June 13, 1988. Dr. Robin is a member of the Stanford University Medical School faculty. *Id.*

274. *See* Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939). After *Walker*, two other cases went to trial in California prosecuting parents who failed to call a physician for a child who subsequently died of meningitis. State v. Glaser, No. A753942 (Cal. Super. Ct. Los Angeles County Mar. 29, 1985); State v. Rippberger No. 13301-C (Cal. Super. Ct. Sonoma County July 16, 1985). District attorneys are planning to prosecute all similar cases. *See* Sacramento Bee, February 17, 1990, at B5, col. 1.

275. Regina v. Wagstaffe, 10 Cox C.C. 530 (1868).

276. *Wagstaffe*, 10 Cox C.C. at 533.

277. *Id.*

278. Walker v. Superior Court, 47 Cal. 3d 112, 137, 763 P.2d 852, 865, 253 Cal. Rptr. 1, 14. However, Dr. David Eddy, director of the Duke University Center for Health Policy Research stated: "We don't know what we're doing in medicine." San Jose Mercury News, February 18, 1990 at 23A, col. 1.

While the court supports its conclusion by stating that medical care has advanced from the days of *Wagstaffe* when leeches and blisters were common medical practice, the court fails to address the fact that the death rate for meningitis in hospitals today ranges from ten to fifteen percent.[279] Under *Walker*, all forms of health care other than medicine, including herbal, chiropractic, acupuncture, and spiritual treatment, may potentially constitute grounds for criminal negligence. Thus, the *Walker* court effectively outlaws differing opinions on health care and establishes that medical science is the only legally safe form of health care. Whether any other form of health care is legal will now depend on a jury's determination of the reasonableness of the chosen method.

The United States Supreme Court in *United States v. Ballard*[280] held that the free exercise clause forbids judicial scrutiny of the reasonableness of a defendant's religious beliefs.[281] However, by applying an objective standard for determining criminal negligence in religious defense cases, the *Walker* court demands that juries determine the reasonableness of a belief in the efficacy of spiritual treatment. Therefore, the *Walker* decision, utilizing an objective standard for determining criminal negligence in religious defense cases, may be unconstitutional under the free exercise clause.[282]

D. Possible Legislative Responses to Walker

The *Walker* court may have misinterpreted what the California legislature intended to accomplish by enacting the 1976 amendment

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279. *See Walker*, 47 Cal. 3d at 136, 763 P.2d at 864, 253 Cal. Rptr. at 13; Robin, *Second Opinion*, The Press-Enterprise, June 13, 1988. Of those that survive under medical care, approximately 20% suffer brain damage. Brief for Real Party in Interest at 6, Walker v. Superior Court, 47 Cal. 3d 112, 763 P.2d 852, 253 Cal. Rptr. 1 (1988) (No. S.F. 24996). Christian Science has healed medically diagnosed meningitis cases. 89 CHRISTIAN SCIENCE SENTINEL 29-30 (May 11, 1987). *See supra* note 259 (discussing other cases healed through Christian Science treatment).

280. 322 U.S. 78 (1944).

281. United States v. Ballard, 322 U.S. 78, 86-87 (1944). *Accord* Thomas v. Review Bd. of the Ind. Employment Sec. Div., 450 U.S. 707, 714 (1980); Founding Church of Scientology of Washington D.C. v. United States, 409 F.2d 1146, 1162 (D.C. Cir. 1969). *See also* Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969) (stating that courts cannot resolve disputes which require tribunals to weigh the significance and meaning of religious doctrines). Laurence Tribe states that courts can test a religious believer's sincerity, but not evaluate a religious belief's reasonableness. L. TRIBE, *supra* note 34, at 1182. He further states that: "Judicial scrutiny of the rationality and verity of a defendant's religious beliefs is forbidden." Petition for Writ of Certiorari at 21, Walker v. Superior Court, 42 Cal. 3d 112, 763 P.2d 852, 253 Cal. Rptr. 1 (1988) (No. SF 24996).

282. Petition for Writ of Certiorari at 20, Walker v. Superior Court, 42 Cal. 3d 112, 763 P.2d 852, 253 Cal. Rptr. 1 (1988) (No. S.F. 24996). *Accord* Commonwealth v. Barnhardt, 497 A.2d 616, 623 (Pa. Super. 1985).

to section 270.[283] Rather than limiting parental religious exemptions to the support duty prescribed by section 270, the legislature may have intended to exonerate parents who utilize spiritual treatment for their children, in lieu of medical care, from all criminal liability.[284] If the court did misinterpret legislative intent, the California legislature should amend section 270 to clarify that the religious exemption applies to all California penal statutes.[285]

In enacting an amendment to section 270, the legislature could protect child safety by allowing only religious healing methods with a proven record of efficacy to act as a substitute for medical care.[286] The legislature could also expand the definition of "other remedial care" in section 270 to include other nonreligious healing methods which have proven effective in the past, such as acupuncture or chiropractics. A legislative amendment to section 270 should provide secular standards for determining which methods constitute legal conduct, thus avoiding the establishment clause problems Justice Mosk found to exist in the current version of section 270.[287]

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283. *See* A.B. 2325, 1989-90 Cal. Legis., 1st. Reg. Sess. (amended April 25, 1989) (proposing amendment to California Penal Code section 270).

284. *Id.*

285. *Id.*

286. The code sections relied on by the majority to indicate legislative intent may show that the legislature intended to allow effective religious healing methods to be applied to children. *See supra* note 163 and accompanying text (discussing the majority's finding of legislative intent). For instance, section 16509.1 of the California Welfare and Institutions Code states: "Cultural and religious child-rearing practices and beliefs which differ from general community standards shall not in themselves create a need for child welfare services unless the practices present a specific danger to the physical or emotional safety of the child." CAL. WELF. & INST. CODE § 16509.1 (West 1989). A religious method that has a record of healing efficacy should not present a specific danger to the child. *See* R. PEEL, SPIRITUAL HEALING IN A SCIENTIFIC AGE (1987) (discussing instances where illnesses medically diagnosed as fatal have been healed with Christian Science); THE CHRISTIAN SCIENCE PUBLISHING SOCIETY, A CENTURY OF CHRISTIAN SCIENCE HEALING (1966) (presenting many specific accounts of Christian Science healing). *See also* AB 2325, Cal. Leg., Reg. Sess. (1989) (stating that no parent shall be subject to prosecution under any penal code provision for failing to provide medical care if the parent has provided spiritual treatment in lieu of medical care).

287. *See supra* notes 240-53 and accompanying text (discussing Justice Mosk's contention that Penal Code section 270 violates the establishment clause). Amendments to section 270 should pass the *Larson* strict scrutiny test because the statute imposed burdens on religions practicing prayer healing. Therefore, the government may accommodate religions practicing prayer healing under the free exercise clause. L. TRIBE, AMERICAN CONSTITUTIONAL LAW 1193 (2d ed. 1988). "*Larson's* neutrality principle does not extend to cases where the state's denominational line is based on free exercise values." *Id.* Further, section 270 protects children by imposing a duty on parents to provide necessary food, shelter, clothing, and health care. CAL. PENAL CODE § 270 (West 1988). Therefore, the statute has a secular purpose. *See id.* The statute also has the primary effect of protecting children. *See id.* However, a religious exemption should not involve law enforcement officials in excessive entanglement with religion by forcing them to determine which religions are established and effective without secular based guidelines dictating these decisions. *See supra* note 253 and accompanying text (discussing Justice Mosk's objection to section 270 under the third prong of the *Lemon* test).

Bills have been introduced in the California legislature which strive to accomplish these objectives by recognizing three alternative methods for establishing the efficacy of a healing method.[288] First, the fees and expenses connected with treatment must be deductible from either federal or state income tax.[289] Alternatively, the expenses related to the treatment must be reimbursable under state licensed insurance plans.[290] As a final alternative, the healing method must be recognized by public or private health authorities as providing a success rate comparable to that of medical science.[291] Using these secular standards, law enforcement officials will be able to determine whether to prosecute a parent without entangling themselves with individual religious beliefs. Therefore, the statute would no longer present establishment clause concerns. Further, by limiting permitted parental religious practice to those methods which have been proven effective for healing, the statute should adequately protect children in compliance with the *Walker* court's articulated objective.[292] Finally, the statute would not restrict parents to use of medical practice but would allow a choice between all healing methods with a proven record of efficacy. Thus, the statute, instead of creating a denominational preference, would merely acknowledge legal alternatives to medical treatment, thereby completely avoiding establishment clause concerns.[293]

CONCLUSION

With child safety as a compelling concern, the Walker court balanced religious liberty against the governmental interest in a child's life.[294] The majority held that parents may use prayer healing for their children's mild ailments.[295] However, when serious illness threat-

288. *See* A.B. 2325, 1989-90 Cal. Legis., 1st Reg. Sess. (amended April 25, 1989) (proposing amendment to California Penal Code section 270). However, the proposed amendment only allowed exemptions to religious healing practices which are proven effective under one of three alternative methods. *Id.*

289. *Id.*

290. *Id.*

291. *Id.*

292. *See supra* notes 197-98 and accompanying text (stating that the *Walker* court was motivated to protect child safety).

293. *See supra* notes 240-53 and accompanying text (discussing Justice Mosk's establishment clause objections to section 270).

294. *See supra* notes 192-04 and accompanying text.

295. *See supra* note 210 and accompanying text.

ens minors with injury or death, parents must seek medical aid.[296] In so holding, the court has deviated from the common law which allowed religious defenses to charges of criminal negligence.[297]

The court's decision may serve only to punish parents while failing to fulfill its stated intention to protect child safety.[298] Walker also fails to clarify when prayer treatment becomes unlawful.[299] The decision may violate the free exercise clause by allowing juries to determine the reasonableness of religious beliefs.[300] Finally, the decision may cause the legislature to exonerate parents from criminal liability imposed for using prayer treatment and to amend California Penal Code section 270 to comply with the establishment clause.[301]

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296. *See supra* notes 178-97 accompanying text.
297. *See supra* notes 276-80 and accompanying text.
298. *See supra* notes 259-68 and accompanying text.
299. *See supra* notes 269-75 and accompanying text.
300. *See supra* notes 281-83 and accompanying text (discussing the possible violations of the free exercise clauses).
301. *See supra* notes 284-94 and accompanying text (discussing a proposed amendment to California Penal Code section 270).